



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

State Tea Party Express
Attn: Kelly Lawler, Treasurer
P.O. Box 984
Willows, CA 95988

JUN 22 2016

Re: MUR 7085
State Tea Party Express

Dear Ms. Lawler:

On November 2, 2015, the Federal Election Commission ("Commission") notified the State Tea Party Express that the Commission, in the normal course of carrying out its supervisory responsibilities, had ascertained information indicating that the State Tea Party Express may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 14, 2016, the Commission found reason to believe that the State Tea Party Express violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (e). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

If you are interested in engaging in pre-probable cause conciliation, please contact Rachel Flipse, the attorney assigned to this matter, at (202) 694-1302 or (800) 424-9530 within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,


Matthew Petersen
Chairman

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: State Tea Party Express MUR 7085

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7 **I. INTRODUCTION**

8 The Commission's Reports Analysis Division ("RAD") referred State Tea Party Express
9 ("STPE") to the Office of General Counsel ("OGC") because it failed to timely file its 2014 July
10 Quarterly Report regarding independent expenditures made and contributions received. STPE
11 disclosed the expenditures on two 24-Hour Reports in April 2014. Based on the available
12 information, the Commission finds reason to believe that State Tea Party Express violated
13 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (e) by failing to timely file its 2014 July
14 Quarterly Report.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Background**

17 STPE is registered with the IRS as a 501(c)(4) social welfare organization.¹ It is not
18 registered with the Commission as a political committee and therefore does not file regular
19 disclosure reports with the Commission. In April 2014, STPE filed two 24-Hour Reports
20 disclosing a total of \$106,137.99 in independent expenditures.² STPE did not file a July
21 Quarterly Report for independent expenditures made during the corresponding quarterly
22 reporting period of April 1, 2014 through June 30, 2014.

¹ See <http://www.statetepartyexpress.org/>.

² See RR 15L-39 at 1 (Oct. 27, 2015). STPE had not previously reported any expenditures or receipts to the Commission.

On August 7, 2014, RAD sent STPE a Notice of Failure to File concerning the 2014 July Quarterly Report, which had been due on July 15, 2014.³ STPE filed a 2014 July Quarterly Report on August 28, 2014.⁴ The report disclosed the independent expenditures previously disclosed on the two 24-Hour Reports but did not disclose any additional activity.⁵ Five months later, on January 28, 2015, RAD sent STPE a Request for Additional Information inquiring whether STPE had received any contributions intended to further the specific independent expenditures that it had reported.⁶ On March 4, 2015, STPE filed an Amended 2014 July Quarterly Report, which made no changes to the previously disclosed expenditures but included receipts totaling \$111,000 that were not previously disclosed.⁷

RAD referred STPE to OGC for its failure to timely file the 2014 July Quarterly Report. After the matter was referred to OGC, STPE's treasurer submitted a response explaining that she had mistakenly believed that non-registered entities such as STPE were only required to file 24-Hour Reports.⁸ She noted that the independent expenditures were accurately disclosed to the public in advance of the election via the timely 24-Hour Reports.⁹ She further stated that STPE

³ See RR 15L-39 at 1.

⁴ See *id.* at 2.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ STPE Resp. at 1 (Nov. 24, 2015).

⁹ *Id.*

had reviewed its internal reporting process and “plans to work with others who are more familiar with the requirements of non PAC entities for future cycles should we become active.”¹⁰

B. Analysis

Entities that are not political committees within the meaning of the Federal Election Campaign Act of 1971, as amended (the “Act”), must file disclosure reports with the Commission when they make independent expenditures that meet certain aggregate thresholds.¹¹ The timing and threshold for the required report depends on when the entity makes the independent expenditures during the election cycle. Specifically, if the entity makes independent expenditures aggregating \$10,000 or more within a calendar year with respect to a given election any time prior to the 20th day before the election, the entity must file a 48-Hour Report disclosing those expenditures.¹² If the entity makes independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day before the date of an election, but more than 24 hours before the date of an election, the entity must file a 24-Hour Report disclosing those expenditures.¹³

In addition, entities that are not political committees within the meaning of the Act that spend in excess of \$250 on independent expenditures during a calendar year with respect to a given election must also file a quarterly report for any quarterly period in which the independent expenditures exceed \$250 and any subsequent quarterly period during that calendar year when

¹⁰ *Id.*

¹¹ An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. 52 U.S.C. § 30101(17).

¹² 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The entity must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

¹³ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The entity must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

55 additional independent expenditures are made.¹⁴ Such reports must disclose the independent
56 expenditures and contributions in excess of \$200 made for the purpose of furthering the reported
57 independent expenditures.¹⁵

58 During the second quarter of 2014, STPE made \$106,137.99 in independent expenditures
59 but failed to file a 2014 July Quarterly Report disclosing these expenditures and the associated
60 contributions in a timely manner. Accordingly, the Commission finds reason to believe that
61 STPE violated 52 U.S.C. § 30104(c) and 11 C.F.R § 109.10(b) and (e).

¹⁴ 11 C.F.R. § 109.10(b); *see* 52 U.S.C. § 30104(c). *See also* Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)).

¹⁵ 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(e). There are important practical reasons for the quarterly reporting requirement — for example, these reports disclose all independent expenditures the entity made during the quarterly reporting period, including those that fall outside the 24-Hour and 48-Hour reporting requirements. 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10. As a practical matter, the Commission has no other means of determining whether an entity that fails to file a quarterly report or verified statement has met its reporting obligations for that quarter. For example, an independent expenditure made within 24 hours of an election is not reportable on 24-hour or 48-hour reports and would only be disclosed on a quarterly report. Similarly, if a committee made one independent expenditure of \$250 or greater, but less than \$1,000, it would also only be disclosed on a quarterly report. 11 C.F.R. § 109.10(b) and (d).